

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KELVIN RAY ANDERSON,

Plaintiff,

v.

K. T. SANBORN, et al.,

Defendants.

No. 2:21-cv-0561-EFB P

ORDER

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, seeks to proceed in forma pauperis (ECF No. 6).

Application to Proceed in Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which

1 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
2 relief.” *Id.* § 1915A(b).

3 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
4 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
5 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
6 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
7 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
8 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
9 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
10 U.S. 662, 679 (2009).

11 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
12 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
13 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
14 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
15 678.

16 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
17 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
18 content that allows the court to draw the reasonable inference that the defendant is liable for the
19 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
20 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
21 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
22 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

23 Screening Order

24 Plaintiff’s complaint alleges the following: While housed at the California Health Care
25 Facility (CHCF), defendant Sanborn falsified documents implicating plaintiff in a conspiracy to
26 distribute a controlled substance. ECF No. 1 at 4. Defendant Reyes then falsified a rules
27 violation report charging plaintiff with the same. *Id.* at 3. Plaintiff was “adversely transferred” to
28 Pelican Bay State Prison, where the hearing officer, defendant Deters, found plaintiff guilty of

1 conspiring to introduce a controlled substance into CHCF. *Id.* at 4, 6. Deters did not provide
2 plaintiff with copies of the records he relied upon at the hearing. *Id.* at 5. Plaintiff sought to
3 administratively appeal the disciplinary decision but defendant DeJesus interfered. *Id.* Plaintiff
4 ultimately received a new hearing, where he was found to be not guilty. *Id.* at 3, 5.

5 Plaintiff claims that defendants' alleged conduct injured him in the form of lost wages,
6 lost personal property, psychological trauma, and the adverse transfer. *Id.* at 6. He does not
7 specify whether these losses were imposed as punishment or were indirect consequences of being
8 found guilty.

9 Plaintiff asserts claims of retaliation and the denial of due process. As discussed below,
10 the allegations are not sufficient to survive screening.

11 The complaint fails to state a First Amendment retaliation claim because it does not allege
12 that any defendant took adverse action against plaintiff *because* plaintiff had engaged in conduct
13 that is protected by the First Amendment. *See Rhodes v. Robinson*, 408 F.3d 559, 567-568 (9th
14 Cir. 2005). If plaintiff intends to pursue a retaliation claim in an amended complaint, he must
15 allege facts showing that a defendant was aware of his First Amendment protected conduct (i.e.,
16 filing or intending to file a complaint against a defendant), and that the complaint was "the
17 'substantial' or 'motivating' factor" behind defendant's allegedly adverse actions. *See Brodheim*
18 *v. Cry*, 584 F.3d 1262, 1271 (9th Cir. 2009).

19 The complaint also fails to state a due process claim with respect to either the
20 administrative appeals process or the disciplinary proceedings. The Due Process Clause protects
21 prisoners from being deprived of life, liberty, or property without due process of law. *Wolff v.*
22 *McDonnell*, 418 U.S. 539, 556 (1974). Any failure to properly process or respond to an
23 administrative appeal does not violate due process, as there are no constitutional requirements
24 regarding how a grievance system is operated. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th
25 Cir. 2003); *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993). As for prison disciplinary
26 proceedings, due process requires prison officials to provide the inmate with: (1) a written
27 statement at least 24 hours before the disciplinary hearing that includes the charges, a description
28 of the evidence against the inmate, and an explanation for the disciplinary action taken; (2) an

1 opportunity to present documentary evidence and call witnesses, unless calling witnesses would
 2 interfere with institutional security; and (3) legal assistance where the charges are complex or the
 3 inmate is illiterate. *See Wolff*, 418 U.S. at 563-70. Due process is satisfied where these minimum
 4 requirements have been met, *see Walker v. Sumner*, 14 F.3d 1415, 1420 (9th Cir. 1994), and
 5 where there is “some evidence” in the record as a whole which supports the decision of the
 6 hearing officer, *see Superintendent v. Hill*, 472 U.S. 445, 455 (1985). Here, plaintiff has not
 7 shown that he was denied wages or personal property as a result of the disciplinary proceedings.
 8 Regardless, there is no property or liberty interest in a prison job that is protected by the Due
 9 Process Clause. *Walker v. Gomez*, 370 F.3d 969, 973 (9th Cir. 2004); *Vignolo v. Miller*, 120 F.3d
 10 1075, 1077 (9th Cir. 1997). Furthermore, the complaint does not show that plaintiff was denied
 11 any process he may have been due, even if the underlying charge against him was falsified. *See*
 12 *Buckley v. Gomez*, 36 F. Supp. 2d 1216, 1222 (S.D. Cal. 1997) (prisoners have no constitutional
 13 right to be free from wrongfully issued disciplinary reports), *aff’d without opinion*, 168 F.3d 498
 14 (9th Cir. 1999).

15 Leave to Amend

16 Plaintiff’s complaint is dismissed with leave to amend. If plaintiff chooses to file an
 17 amended complaint it should observe the following:

18 Any amended complaint must identify as a defendant only persons who personally
 19 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*
 20 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
 21 constitutional right if he does an act, participates in another’s act or omits to perform an act he is
 22 legally required to do that causes the alleged deprivation). The complaint should also describe,
 23 in sufficient detail, how each defendant personally violated or participated in the violation of his
 24 rights. The court will not infer the existence of allegations that have not been explicitly set forth
 25 in the amended complaint.

26 The amended complaint must contain a caption including the names of all defendants.
 27 Fed. R. Civ. P. 10(a).

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1 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See*
2 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

3 Any amended complaint must be written or typed so that it so that it is complete in itself
4 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
5 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
6 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
7 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter
8 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
9 1967)).


10 Finally, the court notes that any amended complaint should be as concise as possible in
11 fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of
12 procedural or factual background which has no bearing on his legal claims.

13 Conclusion

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 6) is GRANTED;
- 16 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
17 accordance with the notice to the California Department of Corrections and
18 Rehabilitation filed concurrently herewith;
- 19 3. Plaintiff’s complaint (ECF No. 1) is DISMISSED with leave to amend within 30 days
20 from the date of service of this order; and
- 21 4. Failure to comply with this order may result in dismissal of this action for the reasons
22 stated herein.

23 DATED: June 14, 2021.

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EDMUND F. BRENNAN
25 UNITED STATES MAGISTRATE JUDGE
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